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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,756	10/23/2003	Masayoshi SHIOYA	49288.0200	2755
20322	7590	08/09/2006	EXAMINER PATEL, GAUTAM	
SNELL & WILMER ONE ARIZONA CENTER 400 EAST VAN BUREN PHOENIX, AZ 85004-2202			ART UNIT 2627	PAPER NUMBER

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/605,756	Applicant(s) SHIOYA ET AL.	
	Examiner Gautam R. Patel	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

A. Claims 1-12, are drawn to a recording and reproducing apparatus having a control section that adjusts gain based on a linear velocity of recording medium, classified in Class 369, subclass 47.47.

B. Claim 13 is drawn to a recording and reproducing apparatus having a control section that adjusts gain based on a detected tilt of recording medium, classified in Class 369, subclass 53.19.

C. Claims 14-15 are drawn to a recording and reproducing apparatus having a control section that adjusts gain based on the sensitivity of recording medium, classified in Class 369, subclass 53.22.

D. Claim 16 is drawn to a recording and reproducing apparatus having a control section that adjusts gain based on position of the beam of recording medium, classified in Class 369, subclass 53.39.

E. Claim 16 is drawn to a recording and reproducing apparatus having a control section that adjusts gain based on the average intensity of modulation of the beam of recording medium, classified in Class 369, subclass 47.19.

F. Claim 16 is drawn to a recording and reproducing apparatus having a control section that adjusts gain based on measured temperature of recording medium, classified in Class 369, subclass 53.18.

Inventions A and B are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention B has separate utility such as with a magnetic disc or hard drive. See MPEP § 806.05(d).

Inventions A and C are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention B has separate utility such as with a magnetic disc or hard drive. See MPEP § 806.05(d).

Inventions A and D are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention B has separate utility such as with a magnetic disc or hard drive. See MPEP § 806.05(d).

Inventions A and E are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be

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separately usable. In the instant case, invention B has separate utility such as with a magnetic disc or hard drive. See MPEP § 806.05(d).

Inventions A and F are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention B has separate utility such as with a magnetic disc or hard drive. See MPEP § 806.05(d).

Similar arguments are applicable to groups B with respect to C-F. Group C with respect to D-F. Group D with respect to E-F. and group e with respect to F.

Because these inventions are distinct for the reasons given above and the search required for Group [1] is not required for Group [2], restriction for the examination purposes as indicated is proper.

In addition, the Applicants are also required elect a single species from whichever of the above group they elect. For groups A to F.

These groups contains claims directed to the following patentably distinct species of the claimed invention:

This application contains claims directed to the following patentably distinct species of the claimed invention:

The optical device of:

fig. 1 [first embodiment];
fig. 3 [second embodiment]; and
fig. 4 [third embodiment].

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are considered generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to Mr. Howard Sobelman on August 3, 2006; to request an oral election to the above restriction requirement, but did not result in an election being made. NOTE: Mr. Sobelman requested that a formal restriction be sent out for examination of the client.

Applicant is reminded that upon the cancellation of claims to a non elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

3. A shortened statutory period for response to this action is set to expire 1 (one) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

Contact information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gautam R. Patel whose telephone number is 571-272-7625. The examiner can normally be reached on Monday through Thursday from 7:30 to 6.

The appropriate fax number for the organization (Group 2600) where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Dwayne Bost, who can be reached on (571) 272-7023.

Any inquiry of a general nature or relating to the status of this application should be directed to the Electronic Business Center whose telephone number is 866-217-9197 or the USPTO contact Center telephone number is (800) PTO-9199.

**GAUTAM R. PATEL
PRIMARY EXAMINER**



Gautam R. Patel
Primary Examiner
Group Art Unit 2627

August 3, 2006